

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

JUN 21 2002

C.H.

Michael N. Milby, Clerk

MARK NEWBY, et al.,

Plaintiffs,

v.

ENRON CORP., et al.,

Defendants.

C.A. No. H 01-CV-3624  
AND CONSOLIDATED CASES

PAMELA M. TITTLE, on behalf  
of herself and a class of persons  
similarly situated, et al.,

Plaintiffs,

v.

ENRON CORP., an Oregon  
Corporation, et al.,

Defendants.

C.A. No. H 01-CV-3913  
AND CONSOLIDATED CASES

**CERTAIN DEFENDANTS' RESPONSE TO "JOINT MOTION OF NEWBY  
PLAINTIFFS AND TITTLE PLAINTIFFS REGARDING SERVICE OF PAPERS AND  
NOTICE OF HEARINGS VIA WEBSITE"**

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1. Defendants<sup>1</sup> submit this response to the “Joint Motion of Newby Plaintiffs and Tittle Plaintiffs Regarding Service of Papers and Notice of Hearings Via Website” to provide the Court with (i) a proposed Order Authorizing Electronic Service of Documents by the neutral and experienced third-party vendor Verilaw Technologies, Inc. (“Verilaw”), a commercial website service system that has been successfully used in other complex cases<sup>2</sup>; and (ii) specifics about Verilaw’s advanced technology.<sup>3</sup>

2. Defendants believe that Verilaw’s “VServe” electronic service and document management system should be used in these actions because it is indisputable that Verilaw offers technology far superior to that contained in plaintiffs’ proposed website created and maintained by plaintiffs, and is the most secure, reliable, economical and efficient method of service of pleadings in this litigation. In addition, plaintiffs do not offer any objection to Verilaw’s qualifications as a service provider. Indeed, as set forth below, Verilaw is the website service provider in a consolidated securities litigation in which Milberg Weiss represents plaintiffs.

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<sup>1</sup> The following defendants in the *Newby* and/or *Tittle* consolidated actions have joined in this submission and are referred to herein as “defendants”: J.P. Morgan Chase & Co., Citigroup, Inc., Credit Suisse First Boston, Canadian Imperial Bank of Commerce, Bank of America Corp., Merrill Lynch & Co., Inc., Barclays PLC, Lehman Brothers Holdings, Inc., Kirkland & Ellis, Arthur Andersen LLP, Arthur Andersen-Puerto Rico, Andersen LLP (Cayman Islands), Dorsey L. Baskin, Jr., Joseph F. Berardino, Thomas H. Bauer, Michael L. Bennett, Debra A. Cash, Donald Dreyfus, James A. Friedlieb, Stephen Goodard, Jr., Gary B. Goolsby, Gregory J. Jonas, Robert Kutsenda, Michael M. Lowther, Michael C. Odom, C.E. Andrews, John E. Stewart, Benjamin S. Neuhausen, Richard R. Petersen, Steve M. Samek, Nancy Temple, William E. Swanson, Roger D. Willard, Michael D. Jones and Gregory W. Hale.

<sup>2</sup> The defendants who submitted papers previously on this issue had not attached an Order regarding Verilaw. Accordingly, the defendants submitting this response to plaintiffs’ motion for its website also make this submission as a cross-motion requesting that Verilaw be Ordered to be the vendor to oversee a website for electronic service and document management in this litigation.

<sup>3</sup> In accordance with the Court’s Order of June 10<sup>th</sup>, the parties did “confer and attempt to resolve this issue of the appropriate website.” Plaintiffs, however, did not agree until yesterday to consider any third party provider as an alternative to plaintiffs’ continuing to administer the website it has created. Once plaintiffs agreed to consider a third party provider, it suggested a company other than Verilaw. During conversations yesterday afternoon with an executive for the alternative provider that plaintiffs suggested, White & Case was advised by this document depository provider that it was not in the business of building or maintaining websites for electronic service of pleadings and maintenance of court dockets. Accordingly, defendants informed plaintiffs that they continued to prefer Verilaw to be the website service provider in this case. Plaintiffs then filed the Joint Motion.

3. Verilaw is well-known and oft-used for providing fast, reliable and inexpensive service of process in major complex cases across the United States.<sup>4</sup> See Verilaw's "Judicial References" and "Representative Projects" attached as Exhibit A. Under Verilaw's VServe system, parties serve documents by transmitting them by hard copy, fax or in electronic form to Verilaw. Verilaw posts documents on its website, emails notice to all parties of the document served, and provides a link to the website where the served document is posted. The parties then access the website and download the served document. The procedures under this system are outlined in the attached proposed Order.

4. Unlike the website proposed by plaintiffs, Verilaw comes with a host of features that are extremely important in actions such as these, where the consolidated dockets already have over 1,500 pleadings. For example, Verilaw:

(i) posts a complete and separate docket sheet for each consolidated case, as well as each individual case within a consolidated MDL case;

(ii) offers indexing and search capabilities for each docket entry by many categories, including filing party, name of document, date filed, document type, etc.;

(iii) offers separate links for documents and their exhibits;

(iv) offers "threading" capability such that all related entries on a docket may be linked to enable comprehensive and easy reference and retrieval – *e.g.*, motions to dismiss, responses and replies thereto, and the ultimate order of the court, are highlighted on every pleading as such and grouped together;

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<sup>4</sup> Verilaw has implemented its VServe system in many MDL litigations including *Baycol Prod*, 0:01md01431 (D. Minn.); *Vitamins Antitrust*, 1:99-MS-197 (D.D.C.); *Diet Drugs*, 2:10md01203 – 2:14md01203 (E.D. Pa.); *Propulsid Products Liability*, 2:00md01355 (E.D. La.). In addition, plaintiffs' Lead Counsel in the *Newby* action is acquainted with the Verilaw system as Verilaw has also implemented VServe in *In re Initial Public Offering Securities Litigation*, 21 MC 92 (S.D.N.Y.), in which Milberg Weiss represents plaintiffs. See Exhibit A.

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(v) accepts documents in any conventional file format and converts the file to PDF (“portable document format”);

(vi) time stamps each document upon its posting on Verilaw;

(vii) applies sophisticated encryption and security technologies to every posted document to prevent unauthorized access and/or tampering with any document posted on the website;

(viii) offers a sophisticated calendaring and messaging bulletin board system pursuant to which attorneys quickly and cost-effectively may coordinate scheduling issues such as deposition dates and court hearings;

(ix) offers a plaintiffs-only secure bulletin board, and a defendants-only secure bulletin board, for messaging and communication solely among plaintiffs or defendants;

(x) offers unlimited experienced technological support for the website, including a “helpdesk” for users of the website in the event there are any technological malfunctions etc.

5. All of these services are provided for a flat fee of \$350 per law firm, and \$10 per filing (regardless of length) if the filing is received in electronic form. This filing fee is paid only by the single law firm posting the filing on Verilaw.

6. Plaintiffs’ arguments that Verilaw is not cost efficient are misplaced for two reasons. First, the magnitude of this litigation makes it absolutely essential that a highly reputable and experienced provider of electronic service and document management systems such as Verilaw be retained to create and maintain the website pursuant to which the parties will serve and access the pleadings in this case. Second, the costs associated with using Verilaw are minimal compared to the savings engendered from obviating the costs of copying and service, of every pleading, on hundreds of parties by Federal Express or even regular mail.

7. In addition, as stated in defendants' earlier papers, Verilaw is a superior choice because it is an independent website created and operated by a neutral and experienced third-party vendor. Plaintiffs' website, while created in good faith, was created and has been operated only by plaintiffs. Verilaw offers the necessary experienced, around-the-clock technological support for the website in the event there are any malfunctions.<sup>5</sup> Indeed, plaintiffs' suggestion that they "turn over" their website to a document depository provider to maintain it in the future does not allay these concerns. There is no evidence that such a document depository provider has the requisite technological expertise to resolve the technical problems that might occur as a result of the magnitude of filings and different dockets to be maintained in a litigation of this magnitude.<sup>6</sup>

8. Moreover, the use of a system created and maintained by plaintiffs invites problems with regard to any malfunction, technological glitch or other mishap that any party may ever experience, because any problem inevitably will raise issues regarding plaintiffs' course of conduct in creating or maintaining the system. Given the availability of a superior and economical outside vendor, even the potential for "fingerprinting" should be avoided.

9. Finally, the proposed Order does not affect the procedure for filing documents with the Court. While the Court need not access the Verilaw system, access is provided to the Court for free. Thus, the Clerk of the Court will be able simply to fax orders of the Court to

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<sup>5</sup> Indeed, technical glitches already have occurred on plaintiffs' website: Certain filings posted on the site have been inaccessible to some or all users (*e.g.*, Tittle Plaintiffs' Overview Memorandum re all Defendants' Motions to Dismiss First Amended and Consolidated Complaint; Tittle Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss Civil RICO Claims; Tittle Plaintiffs' Memorandum in Opposition to Defendants' Motions to Dismiss State Law Claims; Tittle Plaintiffs' Memorandum in Opposition to Andersen Worldwide Societe Cooperative's Motion to Dismiss the First Consolidated and Amended Complaint); and plaintiffs already have experienced difficulties scanning documents prior to posting, which resulted in incomplete filings being posted on the site (*e.g.*, Affidavit of Mark A. Strauss, Exhibits to the Affidavit of Mark A. Strauss, Amended Exhibit C to the Affidavit of Mark A. Strauss).

<sup>6</sup> Again, the document depository provider proposed yesterday by plaintiffs advised counsel for White & Case that it is not in the business of creating or maintaining websites for electronic service and court docket

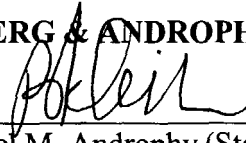
Verilaw to serve all parties, thereby obviating the need for the Clerk to fax and mail hundreds of pages of material every day (a huge savings to the Court). In addition, the parties contemplate having the website include a chronological collection of all orders entered by the Court in these cases and searchable transcripts of all hearings – website features that Verilaw routinely provides in other cases.

10. Accordingly, the undersigned defendants move this Court to enter the proposed Order.

Dated: June 20, 2002

Respectfully submitted,

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management. As a result, defendants have no assurances that this provider has the expertise to service even the simple website plaintiffs have constructed, let alone its hundreds of users, on an ongoing basis.

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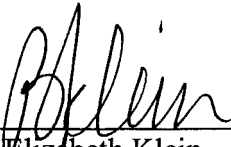
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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 21<sup>st</sup> day of June, 2002.

  
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B. Elizabeth Klein

The Service List  
Attached  
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The Exhibits May  
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